

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE ORDER

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**IN THE MATTER OF:**

**JAMES F. RIGGAN dba CLEAR CREEK  
MOBILE HOME PARK  
Public Water Supply Facility No. 5288601**

**ADMINISTRATIVE ORDER  
NO. 2012-WS- 04**

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**TO: James F. Riggan, Owner  
Clear Creek Mobile Home Park  
P.O. Box 133  
Tiffin, Iowa 52340**

### I. SUMMARY

The Iowa Department of Natural Resources (Department) issues the following administrative order (order) to James F. Riggan dba Clear Creek Mobile Home Park (James F. Riggan). The order is issued due to violations concerning the water supply system at the Clear Creek Mobile Home Park, Tiffin, Iowa. This order requires James F. Riggan to pay an administrative penalty of \$5,000.00 and submit \$125.00 for the annual water supply fee and late fee for fiscal year 2010.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**

Aaron Pickens, Environmental Specialist  
IDNR Field Office No. 6  
1023 West Madison  
Des Moines, Iowa 52353-1623  
Ph: 319/653-2135

**Relating to legal requirements:**

Diana L. Hansen, Attorney at Law  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: 515/281-6267

**Payment of penalty to:**

Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034

### II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of

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Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10(455B), which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. The Clear Creek Mobile Home Park (MHP) is a mobile home community located in Tiffin, Iowa (Johnson County). The MHP is owned and operated by James F. Riggan, also known as Jim Riggan. The MHP operated a public water supply system (PWS) classified as a Grade A community water supply until summer 2102, when the system was reclassified as a non-PWS. The water system serving the MHP has approximately 60 service connections and 150 residents. Water is obtained for the MHP by means of a connection with the City of Tiffin, Public Water Supply ID No. 5288021. The estimated water usage by the MHP is approximately 7,600 gallons per day (GPD).

2. The facility owner was issued a water supply operation permit on October 6, 2009. The permit required the facility owner to hire and retain a Grade A certified operator to be in direct responsible charge of the treatment and distribution systems. A revised permit was issued on January 18, 2011. The revised permit was issued in order to change the lead and copper monitoring. In addition to bacteria and nitrate monitoring requirements, the revised permit required monthly operation reports (MORs) to be signed by the certified operator in direct responsible charge or the operator's designee, maintained at the system for a period of five years and available for review by the Department. The permit required submittal of the MORs with specified information on a monthly basis to Field Office No. 6 (FO 6). The permit required the facility to monitor pumpage or flow at each connection point and to monitor and record disinfectant residuals. The permit required calculation and reporting of a monthly and running annual average Maximum Residual Disinfectant Level (MRDL) on the MOR.

3. The Department's Water Supply Operation Section (WSOS) received an email from Larry Fitzpatrick on February 17, 2010 stating that he had resigned as the certified operator for this MHP effective November 1, 2009. On February 26, 2010, FO 6 sent a letter to Jim Riggan requesting that he submit an operator certification compliance plan by March 26, 2010. The letter was sent due to the resignation of Larry Fitzpatrick on November 1, 2009. FO 6 did not receive a response from Mr. Riggan.

4. On March 17, 2010, WSOS sent the Consumer Confidence Report (CCR) data packet to Jim Riggan. The packet included the data, the certification form, and a cover letter. The cover letter required Mr. Riggan to distribute a completed CCR for 2009 to customers of the PWS by July 1, 2010. Mr. Riggan was required to submit a copy of the CCR to WSOS by July 1, 2010 and the CCR certification form to WSOS by October 1, 2010. The copy of the CCR and the CCR certification were not submitted to the WSOS by the required due dates.

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5. On June 3, 2010, FO 6 conducted a routine sanitary survey at this PWS. The sanitary survey report was sent out on June 7, 2010. Jim Riggan was issued a notice of violation (NOV) at that time for failure to have a certified operator. This violation was noted as a significant deficiency in the report. Mr. Riggan was required to submit a written compliance plan indicating how this deficiency would be corrected. The compliance plan was required to be submitted by July 7, 2010 and to include a schedule for correction of deficiencies. FO 6 did not receive a response from Mr. Riggan to the NOV letter.

6. On June 28, 2010, WSOS sent an invoice for the annual water supply fee of \$25.00 for fiscal year 2011 (July 1, 2010 through June 30, 2011). This annual fee was due by September 1, 2010. On September 2, 2010, WSOS sent a second invoice to Jim Riggan concerning the \$25.00 annual fee and late fee of \$100.00 for payment after September 1, 2010. The annual fee and late fee totaling \$125.00 have not been paid by Mr. Riggan to date.

7. On July 30, 2010, FO 6 sent an NOV to Jim Riggan for failure to respond to the sanitary survey and for failure to have a certified operator. The NOV required Mr. Riggan to submit the operator certification compliance plan to FO 6 by August 27, 2010. FO 6 did not receive a response from Mr. Riggan to the NOV.

8. On September 2, 2010, WSOS issued an NOV to Jim Riggan for a reporting violation due to failure to produce the CCR by July 1, 2010 and failure to provide a copy of the CCR to the Department by July 1, 2010. The NOV and public notice instructions sent with the NOV additionally advised Mr. Riggan that public notification was required to be given and that proof of public notice was required to be submitted to the Department. The Department has not received proof that public notice for failure to produce the CCR and failure to submit a copy of the CCR to the Department was given by Mr. Riggan. The CCR was completed in 2012 by the current MHP manager with the assistance of Department staff.

9. On September 16, 2010, WSOS sent a reminder notice regarding lead and copper sampling to Jim Riggan. On November 19, 2010 WSOS issued an NOV to Jim Riggan for failure to collect and report five lead and copper samples during the June 1, 2010 through September 30, 2010 monitoring period. The NOV and public notice instructions sent with the NOV additionally advised Mr. Riggan that public notification was required to be given concerning the lead and copper monitoring violation and that proof of providing public notice was required to be submitted to the Department. The Department has not received proof that public notice for failure to monitor and report for lead and copper was given by Mr. Riggan.

10. On October 14, 2010, FO 6 sent another NOV to Jim Riggan for failure to respond to the sanitary survey and failure to have a certified operator for this PWS. Mr. Riggan was required to submit the operator certification compliance plan by November 19, 2010

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to FO 6. Mr. Riggan did not respond to FO 6 and did not submit a compliance plan for a certified operator.

11. On January 18, 2011, WSOS issued a revised permit for this MHP for the water system serving the MHP. The revised permit required lead and copper sampling to be completed during 2011 and 2012, due to the missed sampling required by the prior permit for 2010.

12. On January 27, 2011, FO 6 issued another NOV to Jim Riggan for failure to respond and failure to hire a certified operator. The NOV was sent via certified mail. The facility owner was required to submit the operator certification compliance plan by February 25, 2011. The facility owner was advised that failure to respond would result in referral for enforcement action. FO 6 did not receive any response to the NOV letter.

13. On January 27, 2011, FO 6 sent a NOV to Jim Riggan following review of MORs. The NOV was issued due to failure to report MRDLs and for violating the conditions of the permit issued for this PWS. FO 6 had not received any MORs for the MHP since November, 2009. Mr. Riggan was required by the NOV to submit the MOR for February 2011 by March 10, 2011, the required due date for the MOR. FO 6 did not receive this MOR or the prior past due MORs by this date. FO 6 did not receive MORs for the months of March 2011 through June 2011.

14. The facility owner was notified by a letter that the Department was initiating enforcement action. Enclosed with that letter was a proposed consent order with a proposed penalty of \$4,975.00 and fees of \$125.00. When the facility owner failed to respond to the letter and proposed order, he was contacted by telephone and requested to provide information concerning the PWS status of the facility. The facility owner was sent two letters requesting further information on this facility. A meeting was scheduled and attended by FO 6 staff, WS staff, Legal Services staff, the past MHP manager, and the current MHP manager. At the meeting the MHP managers provided information concerning the MHP's purchase of water from the City of Tiffin and resale of water to MHP residents. After the meeting the current MHP managers provided information documenting that the MHP discontinued billing separately for water in September 2010. The MHP has been reclassified as a non-PWS. The MHP was reclassified due to no longer reselling water purchased from another PWS as of September 2010. Due to no longer reselling water, the MHP was eligible for exemption from PWS requirements under 567 IAC 41.1.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.172 makes this Department the agency of the state to conduct the PWS program. Iowa Code section 455B.171 defines a PWS system as a system for the provision of piped water for human consumption, if the system has at least

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fifteen service connections or regularly serves at least twenty-five individuals. Iowa Code sections 455B.173(3), (5), and (6) authorize the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of PWS systems, to adopt drinking water standards to assure compliance with federal standards adopted pursuant to the federal Safe Drinking Water Act, and to adopt rules relating to monitoring, record keeping, and reporting requirements for any PWS. The Commission has adopted such rules at 567 IAC chapters 40- 43.

2. Rule 567 IAC 40.2(455B), further defines PWS by defining "community water system" as a PWS which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents, consistent with federal regulations. A "noncommunity water system" is any other PWS. This facility was a community water system prior to being reclassified as a non-PWS.

3. Iowa Code section 455B.223 provides that it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency, operating a PWS system to operate such a system unless the competency of the operator to operate such plant or system is duly certified by the Director. The Commission has adopted rules relating to certified operators in 567 IAC 43.1(5) and for certification requirements in 567 IAC chapter 81.

4. Subrule 567 IAC 43.1(5) provides as follows.

43.1(5) Requirement for certified operator.

a. CWS and NTNC systems.

All community and nontransient noncommunity public water supply systems must have a certified operator in direct responsible charge of the treatment and distribution systems, in accordance with 567—Chapters 40 through 44 and 81.

Subrule 567 IAC 81.2(3) provides as follows.

81.2(3) Operator-in-charge certification requirement. The operator-in-charge shall hold a certificate of the same classification of the plant or water distribution system and of equal or higher grade than the grade designated for that plant or distribution system.

Subrule 43.1(5)"a" provides that the Department can require a community PWS system to hire a certified operator. The Department has required this facility to hire and retain a certified operator through the permit issued for this PWS. Mr. Riggan operated the Clear Creek MHP without a properly certified operator since November, 2009. This facility owner failed to comply with this requirement.

5. Subrule 567 IAC 43.1(7) covers the requirements for sanitary surveys. This subrule provides as follows:

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Each public water supply system must have a periodic sanitary survey, conducted by the department or its designee, which is a records review and on-site inspection of the system. The inspection evaluates the system's ability to produce and distribute safe drinking water and identifies improvements necessary to maintain or improve drinking water quality. The sanitary survey includes review and inspection of the following areas: water source; facilities (treatment, storage, distribution system); equipment; operation and management; maintenance; self-monitoring requirements; properly certified operators; and records. A report of the sanitary survey is issued by the department, and may include both enforceable required actions for remedying significant deficiencies and nonenforceable recommended actions. The frequency of the sanitary survey inspection must be at least once every five years for noncommunity systems, once every five years for community systems using groundwater, and once every three years for community systems using surface water or influenced groundwater sources. Systems must respond in writing to significant deficiencies outlined in the sanitary survey report within the time period specified in the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey. At a maximum, the written response must be received within 45 days of receiving the survey report. All systems must take the steps necessary to address significant deficiencies identified in the sanitary survey report that are within the control of the system and its governing body.

A sanitary survey of the Clear Creek MHP was conducted by FO 6 on June 3, 2010. Failure to have a certified operator was identified in the sanitary survey report as a significant deficiency. The facility owner was required to submit in writing a compliance plan by July 7, 2010 indicating how a certified operator would be obtained and the time frame for obtaining a properly certified operator. The facility owner never responded to FO 6 concerning this deficiency and did not hire a certified operator.

6. Subrule 567 IAC 42.4(3)"d"(1)-(3) discusses disinfectants in PWS systems. This rule provides that community and nontransient noncommunity PWS systems that add a chemical disinfectant or provide water that contains a chemical disinfectant must monitor for the following to determine compliance with disinfection byproduct requirements: monthly average maximum residual disinfection level (MRDL), running annual average MRDL, and disinfectant residual at sampling. These parameters are required to be reported to the field office within 10 days after the end of each month. FO 6 did not receive MORs with the required MRDL information after November 2009.

7. Subrule 567 IAC 42.3 pertains to CCRs. This rule applies to all community public water supply systems. The purpose of this rule is to establish the minimum requirements for the content of annual reports that community water systems must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks, if any, from exposure to contaminants in the drinking water in an accurate and understandable manner. The Department did not receive the CCR that was required be submitted by July 1, 2010 for 2009 or the required

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CCR certification form by the due date. The CCR deficiency was corrected in 2012. The Department assisted the MHP in the completion of the CCR.

8. Subrule 567 IAC 43.2(1) provides as follows:

43.2(1) Operation fees. A fee for the operation of a public water supply system shall be paid annually. The fee will not be prorated and is nonrefundable. The fee shall be based on the population served. The fee shall be the greater of \$25 per year or \$0.14 multiplied by the total population served by the public water supply for all community and nontransient noncommunity public water supply systems.

Late fees. When the owner of a public water supply fails to make timely application or to remit payment of fees by September 1, the department will notify the system by a single notice of violation. In addition, a late fee of \$100 will be assessed for failure to remit the operation fee by September 1. The department may thereafter issue an administrative order pursuant to Iowa Code section 455B.175(1) or request a referral to the attorney general under Iowa Code section 455B.175(3) as necessary.

The annual operation fee and late fee for fiscal year 2011 have not been received by the Department's WSOS. The facility owner owes \$125.00 for these fees.

9. Subrule 567 IAC 43.2(2) concerning operation permit requirements, provides that "[e]xcept as provided in 43.2(3) and 43.2(4), no person shall operate any public water supply system or part thereof without, or contrary to any condition of, an operation permit issued by the director." Failure to obtain a certified operator, submit required MORs, conduct required monitoring, and conduct required public notification and reporting, are all violations of the facility's operation permit.

10. Subrule 567 IAC 41.4(1) regulates lead, copper, and corrosivity by the setting of a treatment technique requirement. The subrule requires this PWS to sample for lead and copper on an annual basis and to report the results to the individual home owners. The permit for this PWS required the facility owner to collect lead and copper samples during the June 1, 2010 through September 30, 2010 monitoring period. Mr. Riggan failed to collect lead and copper samples during the June 1, 2010 through September 30, 2010 monitoring period as required by this subrule and the permit.

11. Subrule 567 IAC 42.1(4) requires the owner or operator of a PWS system which fails to perform monitoring required by rule to notify persons served by the system within three months. Noncommunity systems may provide public notice by continuous posting in conspicuous places within the area served by the system.

The public notice is required to provide a clear and readily understandable explanation of the violation, the steps the system is taking to correct the violation, and include the telephone number of the owner, operator, or designee of the system as a source of

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additional information. Subrule 567 IAC 42.4(1), paragraph "c", provides that the PWS shall submit a representative copy of the public notice, to the Department within ten days of completion of the notice. This facility owner did not comply with public notice requirements for his failure to complete a CCR and failure to submit a copy of the CCR to WSOS. This facility owner additionally failed to comply with public notice requirements for the lead and copper monitoring violation in 2010.

**V. ORDER**

THEREFORE, in order to abate and redress violations of Department rules and the facility's PWS operation permit, the Department orders James F. Riggan to comply with the following:

An administrative penalty of \$5,000.00 is assessed by this order. You are additionally ordered to pay an additional \$125.00, the annual water supply fee and late fee for fiscal year 2011. The administrative penalty and fees shall be paid to the Department within 30 days of your receipt of this order after it has been signed by the Director.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this order is determined as follows:

a. Economic Benefit. There have been cost savings to the facility in failure to retain a certified operator as required by the water supply operation permit issued to this facility. This facility failed to have a certified operator from November 2009 to September 2010 and from October 2010 to June 2012, when information supporting reclassification was furnished. September 2010 is the month the MHP implemented a new policy to no longer charge residents a separate fee for water. If the MHP had applied to be reclassified at that time to a non-PWS, the Department would have approved the request. At that point the facility would have been reclassified as a non-PWS and no longer been required to monitor, file reports and have a certified operator. At an estimated amount of \$150.00 per month for a certified operator by affidavit, this would total \$1,500.00 in cost savings for the period from November 2009 to September 2010. There were additional cost savings due to not performing the lead and copper monitoring and reporting required by the water supply operation permit and in not providing public notice following the 2010



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monitoring violation. There were also cost savings in not completing and distributing the CCR. An additional amount of \$250.00 is assessed for the cost savings relating to completion of lead and copper monitoring, the CCR and public notices for failure to conduct the monitoring and CCR. The facility additionally has not submitted MORs since November 2009. The Department assesses the amount of \$25.00 for each month that a report was not done for the 10 months from November 2009 to September 2010 for a total of \$250.00 in cost savings for not submitting MORs. This would include the cost of taking the various daily and monthly tests and readings at the facility, and the cost of completing and submitting the reports. The amount of \$2,000.00 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves a potential threat to public health due to the failure to have a certified operator, the failure to take required lead and copper samples, the failure to obtain and record information required by the monthly report and to submit the required MORs, and the failure to give public notice of the lead and copper monitoring violation and the CCR reporting violation. Because of the relative importance of the drinking water program, \$1,500.00 is assessed for this factor, due to multiple violations.

c. Culpability. The facility owner was issued a permit with the monitoring requirements, the requirement to hire and retain a certified operator, the requirement to obtain and report certain information on a monthly basis, and the requirement to submit MORs. Letters and sanitary survey reports advised this facility of the failure to submit MORs, monitoring and reporting deficiencies and the failure to hire a certified operator. The facility owner was given ample time to comply. Therefore, \$1,500.00 is assessed for this factor, in view of multiple violations.

## **VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

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**VIII. NONCOMPLIANCE**

Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp  
CHUCK GIPP  
DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 27<sup>th</sup> day of

August, 2012

James F. Riggan dba Clear Creek Mobile Home Park -- Public Water Supply Facility No. 5288601, Cecilia Naughton-- Water Supply Operations Section, Aaron Pickens-- Field Office No. 6, Diana Hansen-- Legal Services, II.B.2.a.(3), II.B.2.a.(6), II.B.2.e., and II.B.2.f, and II.B.2.g.